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18 United States of America, United States Air Force, Deborah Lee James, Secretary of the
19 Air Force; Brigadier General Paul H. Guemmer; Colonel Patricia D. Hoffman; and
20 Colonel Bobby C. Woods, Jr.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDWARD A. COLLEY and
FREDERICK D. MALCOMB,

Plaintiffs,

v.

AIR FORCE SECRETARY
DEBORAH LEE JAMES et al.,

Defendants.

No. CV 17-3125 RGK (JPRx)

**DEFENDANTS' STATEMENT OF
DISPUTED AND UNDISPUTED
FACTS¹**

Honorable R. Gary Klausner

1 Defendants are unable to present a Joint Statement of Disputed and Undisputed Facts because Plaintiffs' Statement of Disputed Facts (attached to their Opening Brief) does not cite to any evidence. Instead, Plaintiffs cite only to their Third Amended Complaint. Thus, Defendants file this unilateral Statement.

RESPONSE TO PLAINTIFFS' DISPUTED FACTS

Defendants object to Plaintiffs' Statement of Disputed Facts because they cite only to their Third Amended Complaint, rather than to admissible evidence as required. Accordingly, Plaintiff's Disputed Facts should not be considered.

DEFENDANT'S STATEMENT OF UNDISPUTED FACTS

1. Plaintiffs Colley and Malcomb are former Air Force Junior Reserve Officer Training Program instructors at Valencia High School in the William S. Hart High School District in California. (AR 0003)
2. Plaintiff Colley is a retired Captain in the United States Air Force. (AR 00059)
3. Colley was certified to teach as a Senior Aerospace Science Instructor (SASI). (AR 0003)
4. Plaintiff Malcomb was employed as an Aerospace Science Instructor (ASI) at the same school. (AR 00385)
5. The school is designated as CA-782 in the AFJROTC system. (See, e.g., AR 00082)
6. AFJROTC is a subordinate organization at the Air Force's Jeanne M. Holm Center for Officer Accession and Citizen Development, Maxwell Air Force Base, Alabama. (AR 00104)
7. AFJROTC units at the time in question were responsible for an annual self-inspection of their Information Technology (IT) equipment through an online system called "WINGS." (AR 00040-42)
8. On March 7, 2014, the then-director of AFJROTC, Colonel Gilbert, e-mailed all AFJROTC units to remind them of their annual obligations with respect to Automated Data Processing Equipment (ADPE). That e-mail stated:

ALL Units:

ADPE accountability is an Air Force requirement ALL units must be must be compliant by 10 April 2014. *A word of caution: The process may take up to 7 days to complete; (To get your unit to reflect COMPLIANT for Current Academic Year). So please plan accordingly!!

SD has created a new module in WINGS to help units keep EC, Training Certification and ADPE inventory current. Units will no longer email or fax items to ECO, but will work within the new IT Refresh | Account Information Module in WINGS... and will be able to see the status of their unit at any time.

The new Module:

- 1) Ensures units are clear on completion status. (Is your unit compliant or non-compliant?) Units need only check status In WINGS.
- 2) Provides the unit direct feedback concerning errors or expectations. ECO will approve or reject documents. The ECO will send an e-mail to unit if he/she rejects a document explaining what is wrong.
- 3) Eliminates re-work and duplication. Documents must be scanned and uploaded via WINGS. Units will not need to wonder whether or not a fax or an e-mail was received by an ECO.
- 4.) Provides units an auto generated an EC letter.

Four documents are required for an account to be compliant:

1. IT Equipment Custodian (ITEC) apt letter
2. ITEC training certificate for Primary UEC
3. ITEC training certificate for Alternate ITEC
4. An Inventory listing signed by the commander/director and ITEC

A quick overview of the process is as follows (use the attached Info guide for detailed information):

1. Use the IT Refresh->Account information page in WINGS to generate an ITEC appointment letter. Print, sign, scan and upload into WINGS.
2. Have the appointed primary and alternate ITEC click the Training Slides' link in WINGS to review the ITEC training slides. The primary and Alternate ITECs need to print, sign and date the training certificate (the last slide). Scan and upload training certificates into WINGS.
3. Upon receipt of the signed ITEC appointment letter and both training certificates, the ECO office will generate a current AIM inventory with the ITEC names and load a copy into WINGS.
4. The appointed ITECs must then review the AIM inventory listing for accuracy. The appointed ITEC and Commander/Director must sign the last page of the Inventory listing. Scan and upload the complete AIM Inventory listing Into WINGS.

All documents are required to be uploaded Into WINGS to be compliant. The IT Refresh -> Equipment Request page will open on 1 May for all compliant ADPE accounts so that the unit may request IT equipment. The Equipment Request page will not open for non-compliant accounts.

(AR 00019, 00401)

9. On April 7, 2014, Colonel (retired) Peter Gray, Director of AFJROTC Region 4, e-mailed multiple AFJROTC units, including CA-782, to notify them that they had not yet started the April 10 IT Refresh Suspense, and reminded them to complete it in time. (AR 00021, 00151, 00403)

10. On April 11, 2014, Colonel Gilbert e-mailed multiple AFJROTC units, including CA-782, to notify them that they had missed the April 10 suspense to complete their IT Refresh the day before. They were warned: "If you have not completed the suspense by 18 Apr, both instructors at your unit will be placed on probation until the unit's ADPE account is fully compliant. If you fail to bring the ADPE account within compliance by 30 Apr, both instructors will be considered for decertification." (AR 00022, 00153, 00404)

11. On April 22, 2014, Col Gilbert e-mailed the Principal at Valencia High School to notify him that plaintiffs were placed on probation from their instructor duties for failing to meet the ADPE suspense and would remain so until the task was complete. The e-mail read as follows:

Dear School Principal

Effective immediately I am placing your AFJROTC instructors on probation for failing to meet a critical Headquarters suspense. I have sent personal requests to your instructors on March 7, 2014 and April 11, 2014 to provide the required documents to maintain accountability of your unit's Automated Data Processing Equipment (ADPE). This is an addition to numerous attempts by the Regional Director and other Headquarters staff have made to your instructors. Accounting for ADPE is a strict Air Force compliance requirement. This is an annual recurring requirement. As of April 18, 2014, both instructors failed to respond to repeated attempts from my headquarters to close the suspense.

Both instructors are responsible for the management and administration of their AFJROTC program, which includes meeting headquarters' suspenses. Your instructors will remain on probation until the unit's ADPE account is fully compliant. If the instructors fail to bring the ADPE account within compliance by April 30, 2014, we will initiate decertification actions for both instructors. Please monitor this situation closely and ensure your instructors are fully aware of the seriousness of this situation.

(AR 00024, 00032, 00099-100, 00155-156; 00381-382, 00406)

12. Colley signed an Information Technology Equipment Custodian (ITEC) Training
Certification on April 22, 2014. (AR 00012) That same day, Malcomb e-mailed Col.
Gilbert and stated:

Both Capt & I completed the training module, and it's been uploaded. I've uploaded the new EC letter. Our inventory is completed, and we just need to have access to the link to generate a new inventory listing to ensure there is no new items unaccounted for.

As a heads up I completed an inventory in Jan 2014 when we sent in the MPC letter. My understanding was that we were current on our inventory. I'd had communications with Amy Prasier via e-mail and phone. We discussed my confusion on what documents were needed and how to upload them into Wings. I'd previously faxed them and e-mailed them. I do believe at that time it was my understanding that the documents were received, and during one of our conversations I was instructed on how to upload the letter into Wings. I actually thought we were ahead of the game.

Lesson Learned.

(AR 00032, 00414)

13. On April 23, 2014, plaintiff Malcomb had e-mail communications with Ms. Amy Frasier, the Equipment Control Officer at the Holm Center, who let him know that his inventory was ready to be reviewed in the WINGS system. Malcomb acknowledged and promised to complete it later that day. (AR 00028, 00410-412)

1 14. Malcomb received a similar e-mail from the AFJROTC Director of Operations on the
2 same day. (AR 00030)

3 15. Malcomb completed his Equipment Custodian Training Certification on April 22,
4 2014, but did not sign his actual Equipment Custodian certification until April 29,
5 2014. (AR 00393, 00418)

6 16. On March 23, 2015, the Holm Center again began planning for its subordinate
7 organizations to conduct the annual IT Refresh, that is, their inventory and
8 recertification of their IT training. (AR 00102-104)

9 17. AFJROTC pushed this message out to the regional directors who were, in turn, to
10 send it out to the individual AFJROTC units. (*Id.*)

11 18. The Holm Center required its units to complete this tasking by April 30, 2015. (*Id.*)

12 19. This message was sent out to multiple subordinate organizations within the Holm
13 Center, including AFJROTC, the Air Force Reserve Officer Training Corps
14 (AFROTC), and the Air Force Officer Training School (OTS). (*Id.*)

15 20. On April 6, 2015, Colonel (retired) Peter Gray, the then-Deputy of AFJROTC, e-
16 mailed all units as follows:

17 I know this is a busy time of the school year, with a number of suspense's due on
18 10 April but the IT Equipment suspense has Air Force Level interest and we want
19 to help all units meet the suspense. The attached documents walk you through the
20 required steps in the WINGS IT Refresh Module that you need to complete the
required compliance items.

21 Please contact your ADPE representatives that are listed in the IT Refresh WINGS
22 module or your regional director if you have questions or issues concerning this
23 suspense.

24 (AR 162)

25 21. AFJROTC set an internal deadline of April 10, 2015 for its subordinate units to
26 complete the IT Refresh suspense. (AR 00111)

27 22. On April 17, 2015, AFJROTC sent out the following e-mail to multiple schools
28 which had not met the April 10 deadline, including CA-782:

If you are addressed on this email your unit has missed the 10 April annual IT Equipment suspense that has Air Force Level interest! You must complete this tasking by April 24, 2015 or we will be forced to put the unit instructors on probation for failure to comply with HQ-Director guidance.

The attached documents walk you through the required steps in the WINGS IT Refresh Module that are required to complete the compliance items. Please contact your ADPE representatives that are listed in the IT Refresh WINGS module or your regional director if you have questions or issues concerning this suspense.

I understand you are busy finishing the school year but this is a critical suspense that we expect instructors to complete on time if they want to remain in the AFJROTC program.

(AR 00111-115, 00165-166)

23. On April 24, 2015, Col Gray notified Mr. Wayne Barron, the Director of plaintiffs' AFJROTC Region, that CA-782 still had not started its IT compliance. Barron notified plaintiff Colley that he had not started his 2015 annual IT compliance check.
(AR 00044, 00168-169)

24. Later that day, Mr. Barron e-mailed Plaintiff Colley to inform him that he had not started his annual IT compliance check and that he wanted Colley to call him. (AR 00426)

25. There was later some confusion about whether Plaintiff Malcomb had called him back. Mr. Barron acknowledged in a later message that no call was made. (AR 00438)

26. A WINGS report from 2015 shows that plaintiffs' unit uploaded a number of documents between April 22 and 29, 2014, including their Equipment Custodian Letter and their Inventory. (AR 00026, 00035-36)

27. On April 28, 2015, Plaintiff Malcomb signed his Equipment Custodian letter. (AR 00436)

28. Plaintiff Colley signed an Information Technology Equipment Custodian (ITEC) Training Certification on May 7, 2015. (AR 00011)

1 29. Plaintiff Malcomb also signed his ITEC Training Certification on May 7, 2015. (AR
2 00394)

3 30. By May 7, 2015, Plaintiff Malcomb was still attempting to upload his IT letters into
4 the Wings systems. He admitted in a series of e-mail messages to Ms. Frasier that he
5 was late and that he was unaware that there was an annual requirement to file training
6 certificates. (AR 00491-492)

7 31. By May 15, 2015, the Holm Center was drafting decertification letters for Plaintiffs
8 Colley and Malcomb. A subordinate e-mailed Colonel Woods as follows:

9 Sir, I have drafted Decertification Letters for Capt Colley and MSgt [Redacted]
10 for failing to meet the ADPE suspense two years in a row. I have discussed this
11 with their principal to ensure he understood why we were taking this action. The
12 principal has a great sight picture and appreciation for AFJROTC. I also
13 discussed the situation involving Cadet [Redacted] in detail with the principal and
14 also Mr. [Redacted] A formal investigation was not done but the principal stayed
15 in contact with Mr. [Redacted] the entire weekend, the event occurred on Friday
16 afternoon, to stay abreast of Cadet [Redacted] condition. Mr. [Redacted] was not
17 aggressive or angry he simply very concerned about the lack of leadership at the
18 unit. We left the conversation in a very positive note. Based upon the complete
19 picture I believe decertification is the correct course of action.

20 (AR 00494)

21 32. On May 18, 2015, Colonel Bobby Woods, then-Director of AFJROTC, notified
22 plaintiffs that they were being decertified as AFJROTC teachers. The letters for both
23 substantially read as follows:

24 Effective the end of this academic year, I am removing your certification as an
25 AFJROTC instructor based upon performance that does not meet the standards
26 expected of an Air Force officer and an Air Force Junior ROTC instructor per
27 AFJROTCI36-2002, paragraph 3.1.2.2.5.

28 Last year you were placed on probation following the failure to complete the 2014
29 Air Force ADPE suspense in the specified time. This year, once again, you have
30 failed to meet the specified ADPE suspense for 2015, despite personal direction
31 and phone calls from your Regional Director. Your inability to comply with

1 AFJROTC requirements even after direct Headquarters involvement and
2 reminders more than warrant decertification and are clear indicators of
3 unsatisfactory performance.

4 If you desire to appeal my decertification decision, refer to AFJROTCI36-2002,
5 paragraph 4.7.2, Holm Center Level Appeal, for guidance on the appeal process.

6 This information was shared with the Principal at Plaintiffs' school.
7 (AR 00095, 00097)

8 33.On May 19, 2015, Mr. Barron made his leadership aware that neither Colley nor
9 Malcomb had called him on April 24 and that the "despite personal direction and
10 phone calls from your Regional Director" was not completely true. (AR 00495)

11 34.On May 25, 2015, Plaintiff Colley signed his annual Equipment Custodian
12 information certificate. (AR 00432)

13 35.As of May 30, 2015, the WINGS system showed that plaintiffs were not compliant in
14 their IT refresh. The following dates appeared in WINGS: the Inventory was
15 uploaded on March 26; the Signed Inventory and Equipment Custodian letter on
16 April 28; and the Training Certificates and Inventory on May 7, 2015. (AR 00026,
17 00048-49, 00158, 00408) Plaintiff Malcomb did not sign his Equipment Custodian
18 Letter until April 28, 2015. (AR 00054) Plaintiff Colley did not sign his Equipment
19 Custodian letter until May 25, 2015. (AR 00050)

20 36.On June 2, 2015, Plaintiffs, through counsel, appealed the decertification decisions to
21 the decertification appellate authority, Colonel Patricia Hoffman, then-Vice
22 Commander of the Holm Center. (AR 00117-141)

23 37.On June 30, 2015, Colonel Hoffman denied the appeals. She stated in relevant part:

24 a. You were decertified for not meeting the standards expected of an Air Force
25 officer and an Air Force Junior ROTC instructor per AFJROTCI36-2002, para
26 3.1.2.2.5, specifically for not complying with AFJROTC requirements by failing
27 to meet the ADPE suspense two years in a row despite being reminded by HQ
28 AFJROTC. Per the appeal process in AFJROTCI36-2002, para 4.7.2, the burden
of proof is on you to prove that the decertification is inaccurate, unsubstantiated,
or awarded unfairly.

1 b. You asserted in your appeal that the allegation of missing the ADPE suspense is
2 inaccurate, since you "at all relevant time periods" were in compliance with AF
3 Manual 33-153.

4 1) An AFJROTC instructor must comply with unit regulations as well as Air
5 Force regulations, and unit regulations are permitted to be more restrictive than
6 Air Force regulations. Regarding ADPE inventories and appointment letters,
7 AFJROTCI36-2001 para 4.3.1 is more restrictive than AFMAN33-153 on the
8 frequency of updates, stating "New ADPE equipment custodian letters and
9 AIM inventories will be accomplished and signed every year whether there
have been ADPE equipment custodian changes or not. This needs to be
accomplished between 1 January and 30 April each year."

10 2) Since you twice failed to complete this requirement before the suspense set
11 by HQ AF JR OTC that was within the time period of the AF JROTCI, I find
12 that the grounds of the decertification are accurate.

13 c. You asserted that the decertification is unfair in that decertification for missing
14 two suspenses is a disproportionate penalty. You asserted that 1) you substantially
15 complied with all HQ directives, 2) you were never notified in academic year
16 2014-2015 that alleged noncompliance would result in decertification, and 3) it is
17 in the best interest of the Air Force to retain your certification. You also asserted
18 that it is unfair to decertify you based on alleged non-compliance with information
posted in WINGS because WINGS was not reliable and reflected inaccurate
information on multiple occasions.

19 1) Although you did substantially comply with HQ directives in general, you did
20 fail to comply with a specific and clear HQ AFJROTC direction two years in a
21 row. Other instructors who have failed to meet consecutive ADPE suspenses have
been similarly decertified.

22 2) You were notified that non-compliance would result in decertification in 2014
23 by an 11 April 14 email from the AFJROTC Director and again in 2015 by a 17
24 April 15 email from the AFJROTC Director.

25 3) It is not in the best interest of the Air Force and AFJROTC to retain instructors
26 who cannot independently meet suspenses. HQ AFJROTC oversees over 1,900
27 instructors and it is not the best use of Air Force manpower resources to have HQ
28 personnel expend numerous hours sending multiple emails to instructors to remind
them of their responsibilities.

1
2 4) You were not decertified for non-compliance with information posted in
3 WINGS. You were decertified for not meeting the HQ AF JR OTC suspenses sent
4 to you in a series of emails each year clearly directing you to post documents in
5 WINGS. In 2015, for instance, you received emails on 14 March from the
6 Regional Director, on 6 April from the AFJROTC Deputy Director, on 17 April
7 from the AFJROTC Director, and again on 24 April from Regional Director
8 describing what was required from your unit.

9
10 5) Since other instructors have been decertified for failing to meet the ADPE
11 suspense and you were made aware in both 2014 and 2015 that decertification
12 would be considered for units that failed to meet the suspense set by the
13 AFJROTC Director, I find that the decertification is fair.

14
15 2. Consequently, since your appeal package did not provide evidence that the
16 decertification was inaccurate or unfair, I must deny your appeal.

17
18 (AR 00143-147, 00171-175)

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20 38. The governing Air Force regulations for AFJROTC operations at the time of the
21 events in this case were AFJROTC Instruction 36-2001, *Air Force Junior ROTC*
22 *Operations* (AR 00177-00273); AFJROTC Instruction 36-2001, *Air Force Junior*
23 *Reserve Officer Training Corps*, 28 May 2014 (AR 00275-00318); AFJROTC
24 Instruction 36-2002, *Air Force Junior ROTC Instructor Management*, 11 October
25 2013 (AR 00320-00380).

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1 In addition, Air Force Manual 33-153 generally governed Information Technology
2 requirements at the time, although this document is currently no longer in use in the Air
3 Force.

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5 Dated: April 16, 2018

Respectfully submitted,

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